

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

George Robert Studnicka,

Civil No. 05-723 (JRT/FLN)

Plaintiff,

v.

REPORT AND RECOMMENDATION

A. Daniel Pinheiro, et al. E.N.T. at Mayo;
Yolanda I. Garces, et al. Radiation Oncology;
& Mayo Clinic Facility, et al. Rochester, MN.

Defendants.

Pro Se Plaintiff.
Heather M. McCann for Defendants.

THIS MATTER came before the undersigned United States Magistrate Judge on the Plaintiff's complaint entitled "Complaint For Violation of Civil Rights Under 42 U.S.C. § 1983." [#1]. Plaintiff now moves for Summary Judgment of Default [#155]. The matter was referred to the undersigned for Report and Recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons which follow, the Court recommends that Plaintiff's Motion for Summary Judgment of Default [#155] be denied.

Although Plaintiff has titled his motion as a motion for summary judgment, it is styled as a motion for default judgment. Plaintiff asks for the Court to grant default judgment based upon Defendants failure to provide Plaintiff with required discovery.

Plaintiff places significant emphasis on the assertion that Defendants have not given Plaintiff a copy of his complete medical record. However, the Court has previously found that Defendants have already provided the Plaintiff with a copy of his medical record. (See Docket #218.)

Furthermore, the Court finds no evidence that Defendants have not lived up to their discovery obligations. Therefore, an order for default based upon failure to abide by discovery obligations is not appropriate.

RECOMMENDATION

Based on all the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED** that Plaintiff's Motion for Summary Judgment of Default be **DENIED** [#155].

DATED: March 16, 2007

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **April 4, 2007**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.